08-2696

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—CHANCER DIVISION

JODY P. WEIS, SUPERINTENDENT OF THE CITY OF CHICAGO POLICE DEPARTMENT **Plaintiff,** **v.** **LINDA BRUMFIELD and THE POLICE BOARD OF THE CITY OF CHICAGO,** **Defendants.**	**09 CH 14202** **Hon. Kathleen M. Pantle**

ORDER

This matter comes to be heard on administrative review. Plaintiff Jody P. Weis is the Superintendent of the Chicago Police Department. Defendant Linda Brumfield is a Chicago police officer. The Police Board of the City of Chicago has appeared and briefed a limited issue raised by the Superintendent, i.e. whether the Board properly imposed a suspension order that included conditions for return to service.

On August 21, 2008 the Superintendent filed charges against Brumfield arising from an incident occurring on July 3, 2007 at about 3:45 p.m. at the business premises of Lincoln Towing[1], 4882 N. Clark Street, Chicago, Illinois. Brumfield had attempted to retrieve a car which had been towed by Lincoln Towing without paying the full fees charged by Lincoln Towing. Lincoln Towing often waives the towing fees for cars registered to Chicago police officers[2] and Brumfield asked the dispatcher, Duane Davenport, to waive the towing fees.

[1] During the proceedings, Brumfield sometimes referred to Lincoln Towing as "pirates". The Court assumes that she was referring to the song by Steve Goodman, "Lincoln Park Pirates". The hearing officer did not allow Brumfield to introduce evidence as to Lincoln Towing's policies and practices with regard to the towing of vehicles.
[2] The Court makes no finding as to the propriety or legality of this practice.

Davenport saw that the car was not registered to Brumfield[3] and that it had North Carolina plates on it so he asked his manager if the fees should be waived. The manager declined to waive the fees, and Davenport informed Brumfield that the fees would have to be paid. At that point, Brumfield made a call on her cell phone and Davenport heard her make a statement to the effect along the lines of having Lincoln Towing trucks pulled over. At that moment, a Lincoln Towing truck was leaving the yard and Brumfield read the plates on the truck to the person to whom she was speaking. After the phone call concluded, Brumfield entered the yard to retrieve the car. At some point before she entered the yard, Brumfield paid the full towing fees.

While awaiting the return of the car, which belonged to a friend, Brumfield directed profanity at an employee of Lincoln Towing, Milkos Ilyes, and demanded to know if he was the person who towed the car. Brumfield also pushed Ilyes about four times. After the first push, Ilyes tried to walk away, but Brumfield continued to push him. This altercation was captured on videotape. There was no testimony or evidence that Ilyes was injured. Davenport called 911 so that the situation would not escalate.

Brumfield testified that she was upset because her friend's car was towed from a private residential parking lot which did not have a sign warning that cars may be towed. Her friend, Brandy Jackson, had watched Brumfield's dog and drove over to Brumfield's home to drop the dog off. Jackson had parked at Brumfield's building and brought the dog up to Brumfield's apartment. Brumfield walked Jackson back to the parking lot and noticed that Jackson's car was gone. Brumfield felt that the car should not have been towed under those circumstances and that the fees should be waived therefore. She called Lincoln Towing and told Lincoln of the circumstances. After speaking to someone at Lincoln Towing, she received a phone call from a commander at the 20th District advising her of a 20-day suspension.

[3] The car belonged to a friend of Brumfield's, Brandy Jackson.

Brumfield broke down after receiving that phone call due to a variety of factors. She had recently lost her father and had no family members. She believed that the suspension was connected to a whistle-blowing lawsuit that she had filed and an EEOC Complaint she had made. She needed to hire an attorney even though she had no money saved. Brumfield and Jackson went to Lincoln Towing to retrieve Jackson's car after speaking to her commanding officer.

Brumfield called as a witness a Chicago Police Department captain, Michelle Anderson, who testified to the Brumfield's enthusiasm for her work and Brumfield's involvement in the Chicago Police Women's Association. Captain Anderson had a favorable view of Brumfield.

Brumfield's roommate, Chris Verbaker, also testified. He is a chef who had lived with Brumfield for several months prior to the incident at Lincoln Towing. Verbaker testified to the stressors in Brumfield's life, both before and after the incident in question. Verbaker also mentioned that Brumfield had been seeing a psychiatrist, but had to discontinue treatment because she had no insurance due to Brumfield's suspension from the CPD. Brumfield also could not refill prescription medicine due to a lack of insurance. Verbaker noticed that Brumfield went from being a happy person who enjoyed life to a depressed person who did not get out of bed. Verbaker would make Brumfield lunch so that he could be sure that she was eating. Brumfield was a help to Verbaker when his mother passed away.

After the hearing, the Board found Brumfield guilty of violating Rules 1, 2, 4, 8, 9, and 14. The Board ordered that Brumfield be suspended from August 23, 2008 to May 8, 2009. As a part of the suspension order, the Board ordered that Brumfield "undergo evaluation by a medical professional to determine whether the Respondent has the physical stamina and psychological/emotional stability to properly perform all required police duties..." The

Superintendent has appealed. Brumfield does not challenge the guilty findings of the Board nor does Brumfield challenge the conditions imposed by the Board as part of the suspension order.

Pursuant to 735 ILCS 5/3-104, jurisdiction and venue are proper in this Court for a review of the final administrative decision. The Administrative Review Law provides for judicial review of all questions of fact and law presented by the entire record. *Lyon v. Department of Child and Family Servs.*, 209 Ill. 2d 264, 271 (2004); 735 ILCS 5/3-110 (2009). The Administrative Review Law mandates that the "findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct." *Abrahamson v. Illinois Dep't of Prof'l Regulation*, 153 Ill. 2d 76, 88 (1972) (citing 735 ILCS 5/3-110 (2009)). Although the Board's factual determination is entitled to deference upon review, its decision should be reversed where it is against the manifest weight of the evidence. *Zien v. Retirement Bd. of the Firemen's Annuity and Benefit Fund of Chicago*, 236 Ill. App. 3d 499, 507 (4th Dist. 1992). A finding is against the manifest weight of the evidence if "the opposite conclusion is clearly evident" or where it is "unreasonable, arbitrary, and not based upon any of the evidence." *Lyon*, 209 Ill. 2d at 271 (quoting *Snelson v. Kamm*, 204 Ill. 2d 1, 35 (2003)). The mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal of the administrative findings. *Abrahamson*, 153 Ill. 2d at 88. If the record contains evidence to support the agency's decision, it should be affirmed. *Id.*

The Superintendent challenges the decision of the Police Board on two grounds. First, the Superintendent contends that the decision of the Police Board to suspend, rather than terminate Brumfield, is erroneous. Second, the Superintendent contends that the Police Board

exceeded its authority by imposing conditions on Brumfield in connection with her return to service after the suspension.

"Review of an administrative agency's decision regarding discharge requires a two-step analysis. The court must determine (1) whether the agency's findings are contrary to the manifest weight of the evidence, and (2) whether the findings of fact provide a sufficient basis for the agency's conclusion that cause for discharge does or does not exist. The agency's decision as to cause will not be reversed unless it is arbitrary, unreasonable, or unrelated to the requirements of service." *Sangirardi v. The Village of Stickney,* 342 Ill.App.3d 1, 17 (1st Dist. 2003) (internal citations omitted). See also *Williams v. The Secretary of State Merit Comm'n,* 151 Ill.App.3d 1014, 1021 (4th Dist. 1986) ("The courts have no role as a superior commission, and the question of whether cause for discharge exists is to be determined by the administrative agency..."). Additionally, the Board, and not this court, is in the best position to determine the effect of the officer's conduct in the department, and therefore its determination of "cause" must be given considerable deference. *Valio v. The Board of Fire and Police Commissioners of the Village of Itasca,* 311 Ill.App.3d 321, 330-31 (2d Dist. 2000).

The Court has reviewed the administrative record and finds that the decision of the Police Board was not against the manifest weight of the evidence nor was the decision to suspend, rather than terminate Brumfield, unreasonable, arbitrary, or unrelated to the requirements of service. Evidence was presented as to Brumfield's history on the police force and her history included a significant number of commendations. Though the Superintendent points out that Brumfield's history includes some disciplinary measures, the Board was well aware of the Brumfield's entire employment history. The decision of the Board states that it "has taken into account not only the facts of the case but also Respondent's complimentary and

disciplinary histories." It is not the Court's prerogative to reweigh the evidence or to substitute its judgment for the judgment of the Board.

Moreover, Brumfield engaged in activities that would help other police department employees when she became involved in the Chicago Police Women's Association. At one point Brumfield acted as its president. Her commanding officer testified to Brumfield's enthusiasm for police work. Captain Anderson had a favorable view of Brumfield and remarked that Brumfield stood out among the officers at the Police Academy. Anderson was surprised by the nature of the allegations against her.

Additionally, the Board carefully considered all the evidence presented which included testimony about the significant amount of stress in Brumfield's life at the time of the incident as the Board was concerned about her conduct during the incident and demeanor during the proceedings before the Board. It is apparent that the Board's decision was not arbitrary and unreasonable.

The Board's decision was also not unrelated to the requirements of service. The Board is in a superior position to determine the needs of the Department and there is a sufficient factual basis to conclude that a lengthy period of suspension was sufficient punishment given the lack of injuries to Ilyes and the evidence presented by Brumfield.

As stated above, the Superintendent challenges the Board's authority to impose conditions as a part of the suspension order.[4] The Board has addressed the Superintendent's arguments and Brumfield has adopted the arguments of the Board on this issue and incorporated the Board's arguments into her Brief on Administrative Review.

[4] In its Order of June 2, 2010, the Court requested that the parties address the issue of whether this issue is moot. The Superintendent has informed the Court that the conditions incident to the suspension order have not been fulfilled because Brumfield has not been returned to service due to other charges against her, so this issue is not moot. Apparently, the Board and Brumfield concur in the Superintendent's representation as neither has filed anything to the contrary.

The Superintendent contends that (1) the Board has no standing to assume the role of advocate for purposes of the appeal and therefore the Board's memorandum is moot; and (2) that neither the State statute (65 ILCS 5/10-1-18.1) nor the City of Chicago Ordinance (Chgo. Muni. Code § 2-84-030) grants the Board the authority to impose a condition upon reinstatement of an officer to active duty when the Board has determined that a suspension is the appropriate action.

As to the Superintendent's first argument, the Court would note that Brumfield has adopted the Board's memorandum and incorporated it into her own Brief. Brumfield has also indicated that she adopts the position taken by the Board. Thus, even if the Superintendent is correct about the Board's lack of standing, the Court can address the merits of the issue and consider the issues and arguments raised in the Board's memorandum as Brumfield has standing.

Brumfield contends that the Board has been vested with discretion to impose conditions on a police officer's return to service that are related to a police officer's job requirements and reasonably intended to protect the officer, the Department, and the public interest.

The applicable statute is silent on the issue of whether the Board possesses the authority to impose conditions for return to service as a part of an order of suspension. The statute states in pertinent part:

> In any municipality of more than 500,000 population, no officer or employee of the police department in the classified civil service of the municipality whose appointment has become complete may be removed or discharged, or suspended for more than 30 days except for cause upon written charges and after an opportunity to be heard in his own defense by the Police Board....
>
> Upon the filing of charges for which removal or discharge, or suspension of more than 30 days is recommended a hearing before the Police Board shall be held....
> A majority of the members of the Police Board must concur in the entry of any disciplinary recommendation or action.65 ILCS 5/10-1-18.1.

Section 2-84-030 of the Chicago Municipal Code sets forth the powers and duties of the Police Board and basically adopts the provisions of the statute. Chgo Muni. Code § 2-84-030.

Additionally, the Ordinance recognizes the Board's power to adopt rules and regulations for the governance of the police department. *Id.*

An administrative agency is a creature of statute and has no general or common law powers. *Schalz v. McHenry County Sheriff's Dep't Merit Comm'n*, 113 Ill.2d 198, 203 (1986). "Any power or authority claimed by an administrative agency must find its source within the provisions of the statute by which the agency was created. The authority of the merit commission must either arise from the express language of the Sheriff's Merit System Act, or devolve by fair implication and intendment from the express provisions of the Act as an incident to achieving the objectives for which the commission was created." *Id.* at 202-03. Where the legislature creates a Board as an administrative agency, the Board has only that statutory authority as governed by the Act which created it. *Granite City Div. of Nat'l Steel Co. v. Ill. Pollution Control Bd.*, 155 Ill.2d 149, 161-62 (1993).

Neither the statute nor the ordinance contains express language which grants the Board the power to impose conditions on a suspension order so the first prong of the *Schalz* test is not met. *Schalz*, 113 Ill.2d at 203. Though the Board contends that its authority to impose such conditions devolves by fair implication and intendment from the express provisions of the statute as an incident to achieving the objectives for which the Board was created, this Court cannot agree.

The power given to the Board is to decide whether discipline of an officer is warranted and, if so, what discipline to impose. The Board's power and authority is limited to discipline itself and does not include the power to order an officer to take action with regard to the reason for the misconduct. The only fair implication and intendment from the statute is to achieve the objective that an officer be given a fair hearing before an impartial panel when the

Superintendent seeks to suspend or discharge or remove that officer and to impose appropriate discipline when warranted.

Additionally, should the Court adopt the position that the Board could impose conditions upon return to service, the Board's power to impose conditions would be limitless. For example, the Board could: order alcohol treatment for an officer who violated the rule against being drunk on or off duty; order an officer who lacks physical stamina to join a health club; or order an evaluation for ADHD when an officer is found to have violated the rule regarding inattention to duty. Had the legislature or the City Council intended to give the Board such sweeping powers to direct the off-duty actions of a police officer (and cause the officer or the taxpayers to spend money to fulfill the conditions), they would have done so using express language.

Moreover, the Superintendent is granted the authority by the Board to seek a medical separation if, in the Superintendent's opinion and upon recommendation of the Police Surgeon after examination, an officer does not have the physical stamina or psychological/emotional stability required to perform police duties competently and efficiently. Chgo. Muni. Code § 2-84-050(8) (The Superintendent is granted the power and duty "[t]o exercise such further powers in the administration of the department as may be conferred upon him by the Board"); Rule and Regulations of the City of Chicago, Department of Police, Art. VII "Medical Separation", adopted by the Police Board, 12-13-73, and as amended from time to time. Should the Superintendent seek a medical separation Article VII incorporates the due process rights afforded to every officer against whom discipline is sought.[5] Thus, it is the Superintendent's prerogative to investigate and to seek a hearing on the issue whether an officer should be discharged,

[5] The Superintendent must file written charges and the Board must conduct a hearing which follows the same procedures as a disciplinary hearing. *Id.*

removed, or suspended due to a medical condition, not the Board's prerogative to investigate whether an officer should be disciplined due to a medical condition.

Finally, other considerations warrant the conclusion that it is beyond the Board's power to impose conditions for return to service after a suspension. Enforcement of the Board's conditions presents a problem. It is not clear what would occur should Brumfield not follow the conditions imposed by the Board or if a "medical professional" determines that Brumfield does not have the physical stamina or psychological/emotional stability to properly perform all required police duties. Would the Board then file charges or direct the Superintendent to file charges? If so, then the Board would be usurping the power of the Superintendent to decide against whom charges should be filed. The Board would also be bypassing the safeguard afforded to officers in Article VII which mandates that the Police Surgeon must recommend a separation and that the officer must be examined before the Police Surgeon can make a recommendation. Would the Board convert the suspension into a discharge? If so, then Brumfield will not have been afforded notice and an opportunity to be heard on the issue of whether the conditions should have been imposed at all.

The conditions imposed on Brumfield were imposed without giving her an opportunity to be heard on the issue. The Hearing Officer's recommendation, which was adopted by the Board, acknowledges that "fitness for duty was not an issue the Superintendent presented to the Board". The Board then *sua sponte* imposed the conditions upon the Hearing Officer's recommendation, even though Brumfield was not given notice that such conditions could be imposed and an opportunity to be heard on the issue of whether the conditions were warranted. Generally, officers are given such notice and an opportunity to be heard. Additionally, officers are granted due process rights with regard to medical issues as Article VII prohibits the Superintendent from

even seeking a medical separation absent a recommendation from the Police Surgeon after examination. Should the Superintendent file for a medical separation, the officer is afforded every due process right attendant to any hearing in which the officer's suspension, discharge, or removal is sought. Though Brumfield concurs in the decision by the Board, the Court cannot sanction a practice which gives the Board the right to impose conditions without the basic tenets of due process being afforded an officer.

The decision of the Board to impose conditions on the order of suspension is reversed. The decision of the Board is affirmed in all other respects.

This is a final Order disposing of all litigation in this matter.

DATE: July 9, 2010

Kathleen M. Pantle